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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1962

No. 434

CONSTANTINOS ROUMELIOTIS and PANAYOTA ROUMELIOTIS, his wife,

Petitioners,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

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Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

Constantinos Roumeliotis and Panayota Roumeliotis, Petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled cause on June 15, 1962.

OPINION BELOW.

The opinion of the Court of Appeals is printed in the Appendix to this petition as Appendix A.

JURISDICTION.

The judgment of the Court of Appeals was entered on June 15, 1962, and a petition for re-hearing, which was timely filed, was thereafter denied on July 9, 1962. Jurisdiction of this court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTION PRESENTED.

Whether the introduction of a private bill in Congress, to grant the beneficiary of the bill the status of an immigrant admitted for permanent residence, despite the fact that a previous private bill introduced in the same session of Congress was acted upon adversely, should be honored by the Immigration and Naturalization Service and deportation be stayed pending the outcome of said Bill.

STATEMENT.

Petitioners brought this action in the United States Court of Appeals for the Seventh Circuit pursuant to Title 8 U.S.C., Section 1105A of the Administrative Procedure Act to stay deportation until the private bill, introduced by the Honorable Senator Everett Dirksen on behalf of the Petitioners, could be acted upon.

The Petitioners are natives of Greece. The Petitioner Constantinos Roumeliotis was admitted to the United States on November 12, 1959, as a non-immigrant temporary visitor. The Petitioner Panayota Roumeliotis, his wife, was admitted as a non-immigrant temporary visitor on July 26, 1960.

A private bill for the relief of the Petitioners was introduced in the House of Representatives on January 3, 1961, and was acted upon adversely on July 25, 1961. In the same session of Congress and on February 6, 1962, Senator Everett Dirksen of Illinois introduced a private bill in the Senate of the United States, labeled Senate Bill 2808, for the relief of the Petitioners. This bill has been indefinitely postponed. The Immigration and Naturalization Service refused to honor the bill of Senator Dirksen and ordered immediate deportation of the Petitioners.

Petitioners then brought their action in the Court of Appeals for the Seventh Circuit. The Court of Appeals held that since it appeared that Senator Dirksen's bill had little, if any, chance of being passed by Congress, the Immigration and Naturalization Service had no duty to stay the deportation order merely because the private bill had been introduced in Congress.

REASONS FOR GRANTING WRIT.

The opinion below conflicts in principle with the decision in the case of *U. S. ex rel Knauff* v. *McGrath, Attorney General, et al*, 181 Federal Reporter 2d series, page 839. The *Knauff* case involved an exclusion case wherein a German war bride was detained at Ellis Island on grounds that her admission would be prejudicial to the interests of the United States. Senator Langer introduced a private bill in the Senate to permit her to enter the United States for permanent residence. The court in that case held that "so long as Senator Langer's bill is pending during the present session of Congress, the exclusion order may not be executed."

The opinion of the court in this case states that "The record does not show that the Senate Committee on the Judiciary requested a report from the Service. We suggest that since the Senate Judiciary Committee has not published any Rules for the consideration of private bills and since the House Judiciary Committee has published "Rules of Procedure", we call this court's attention to Rule 11, which states as follows:

> "11. Bills tabled by the Committee shall not be reconsidered unless new evidence is introduced showing a material change of the facts previously known to the Committee."

The question as here presented is entirely novel as a federal question, and this case is important and suitable for the discretionary writ because never before has a matter been presented for review involving whether or not the introduction of a private bill by a Senator should or should not stay deportation until such time as the bill is finally acted upon.

CONCLUSION.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 13636 September Term, 1961 April Session, 1962

Constantinos Roumeliotis and Panayota Roumeliotis, his wife,
Petitioners,
v.
Immigration and Naturalization Service,
Respondent.

Petition for review of an order of the Immigration and Naturalization Service under Public Law 87-301.

June 15, 1962

Before HASTINGS, *Chief Judge*, SCHNACKENBERG and SWYGERT, *Circuit Judges*.

SWYGERT, *Circuit Judge*. Petitioners, Constantinos Roumeliotis and Panayota Roumeliotis, husband and wife, seek review of a decision of the Regional Commissioner of the Immigration and Naturalization Service denying a petition filed in behalf of petitioner Constantinos Roumeliotis for a first preference immigrant visa pursuant to Section 203(a)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. §1153(a)(1)(A); they further request that this Court issue a stay of the deportation orders

heretofore issued against them until Congress has acted finally upon a pending private bill which, if enacted, would provide permanent resident status for petitioners.

Petitioners are natives of Greece. Petitioner Constantinos Roumeliotis was admitted to the United States on November 12, 1959 as a nonimmigrant temporary visitor and his stay was extended until December 1, 1960; his wife was also admitted as a nonimmigrant temporary visitor on July 26 1960 and was authorized to remain in the United States until October 12, 1960. They have resided in Chicago since their admittance.

On April 29, 1960 Saint Taxiarhia and Saint Haralambos Greek Orthodox Church of Chicago filed a petition for a first preference visa in behalf of petitioner Constantinos Roumeliotis and on August 2, 1960 the petition was denied by the District Director of the Immigration and Naturalization Service; this order was affirmed by the Regional Commissioner.

On December 28, 1960 petitioners were served with orders to show cause why they should not be deported for having overstayed their visas. In January, 1961 deportation hearings were conducted. Petitioners admitted their deportability and were ordered deported. Their request for voluntary departure was denied. The order of deportation was not appealed to the Board of Immigration Appeals and became final February 6, 1961, as provided by regulation, 8 C.F.R. 242.20.

On March 29, 1961 Saint Taxiarhia and Saint Haralambos Greek Orthodox Church filed a second petition in behalf of Constantinos Roumeliotis for a first preference

visa. This petition was also denied by the District Director and the decision was affirmed by the Regional Commissioner.

Petitioners were ordered to report for deportation on February 12, 1962. They failed to report. On February 6, 1962 a private bill was introduced in the Senate of the United States, which bill, if enacted into law, would provide permanent resident status for petitioners. On February 13, 1962 the Saint Taxiarhia and Saint Haralambos Greek Orthodox Church filed a third petition in behalf of petitioner Constantinos Roumeliotis for a first preference visa. The petition was denied by the District Director February 20, 1962.

The instant petition for review was filed in this Court on February 21, 1962, in which jurisdiction of this Court is asserted under Section 106(a) of the Immigration and Nationality Act, 8 U.S.C. §1105a.

The government questions the jurisdiction of this Court on two grounds. First, it asserts that while an administrative determination on a petition for a first preference visa may affect a deportation order, the determination is not a final order of deportation, and since the application was not considered in a proceeding under 8 U.S.C. §1252(b), this Court lacks jurisdiction because of the restricted review provisions of 8 U.S.C. §1105a.

We considered today a similar question in *Blagaic* v. *Flagg*, ... F. 2d ....., and decided that the jurisdiction of courts of appeals for initial review under Section 1105a is not as narrow as the government contended in that case. There, the decision under review was the denial of a stay of a deportation order requested under 8 U.S.C.

§1253(h); we decided that the administrative proceeding for a stay under that section was ancillary to the deportation order and that this Court has initial jurisdiction to determine whether the Attorney General abused his discretion in denying the stay.

The proceeding for a first preference visa relates to the status of an alien and while the petition in behalf of petitioner Constantinos Roumeliotis for such a visa, looking merely at the petition, constitutes only an attempt to change his status from a nonimmigrant visitor to a quota immigrant, its determination is no less ancillary to the deportation orders issued against the petitioners than was the stay proceeding under Section 1253(h) in *Blagaic*.

The deportation orders in the instant case were issued pursuant to 8 U.S.C. §1251(a)(2) for the reason that after petitioners' admission as nonimmigrants under 8 U.S.C. §1101(a)(15)(B) they remained in the United States longer than their temporary visas permitted. Two of the three identical petitions for a first preference visa were filed subsequent to the deportation orders. Had either been granted, it would have, in effect, nullified the deportation orders; therefore, the determination on the petition for the visa is in a realistic sense part of the deportation orders. The government's first contention that this Court lacks jurisdiction cannot be sustained.

Second, the government contends this Court lacks jurisdiction by virtue of 8 U.S.C. §1105a (c). This section provides in part, "An order of deportation . . . shall not be reviewed by any court if the alien has not exhausted the administrative remedies available to him as of right under the immigration laws and regulations. . . ." Under the

applicable regulation,[1] the petitioners had a right to appeal their deportation orders to the Board of Immigration Appeals within ten days. This was not done; therefore, under the provisions of another regulation[2] the decision of the Special Inquiry Officer became final. The government argues that the mere finality of the Special Inquiry Officer's decision does not operate as an exhaustion of administrative remedies because if such were the case an exhaustion of such remedies could not be effected by default, citing *Batista* v. *Nicolls*, 1 Cir., 213 F. 2d 20, and *Siaba-Fernandez* v. *Rosenberg*, 9 Cir., ... F. 2d ..... The difficulty with this argument is that while the review in the instant case relates to the orders of deportation, it concerns a proceeding that is ancillary to the orders; in other words, the petition for review is not a direct attack upon the orders per se. We hold that this additional assertion of a lack of jurisdiction cannot be sustained.

Going to the merits of the petition for review, one of the questions presented is whether the denial of the petition for a first preference visa was arbitrary and capricious.

It is solely within the discretion of the Attorney General to determine whether an alien is entitled to a first preference visa under Section 1153(a). Concerning the scope of the review of similar discretionary authority under 8 U.S.C. §1253(h), we believe what we said in *Obrenovic* v. *Pilliod*, 282 F. 2d 874, 876 is pertinent:

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[1] 8 C.F.R. 242.21(b).

[2] 8 C.F.R. 242.20.

> "Plaintiff has a right of limited judicial review by the court of discretionary decisions of the Attorney General. . . . If the reasons for refusing to suspend deportation stated by the Attorney General are sufficient on their face, the court cannot make further inquiry."

The petition for a first preference visa in behalf of petitioner Constantinos Roumeliotis is based on the fact that he has been the sexton of the church that filed the petition. We have read the administrative record filed in this Court. It includes the investigation report of the Immigration and Naturalization Service and the sworn statement of the petitioner relating to the petition for the visa. The facts contained in these documents support the reasons given for the denial of the petition. The reasons, stated in the last notice of denial, are:

> "It has not been established that the services of the beneficiary are urgently needed in the United States. The position for which the beneficiary's services are desired does not require the high degree of skill or ability contemplated by the statute. Your previous two visa petitions filed in behalf of the beneficiary were denied for the above reason and the denials were affirmed by the Regional Commissioner."

We hold, therefore, that the Attorney General's denial of the petition for a first preference visa was not arbitrary and capricious.

The other question presented on the merits relates to petitioners' contention that when a private bill has been introduced in Congress which would permit an alien to adjust his immigration status so as to prevent deportation, the Immigration and Naturalization Service must stay

deportation pending the outcome of the proposed legislation.

Petitioners rely on *U.S. ex rel. Knauff v. McGrath*, 2 Cir., 181 F. 2d 839. That case was a habeas corpus proceeding in which the writ had been denied by the District Court. As in the instant case, a private bill had been introduced in the Senate which would have permitted Mrs. Knauff to enter the United States for permanent residence although the Attorney General had denied her admittance on the ground that her admission would be prejudicial to the interest of the United States. It was alleged in the application for the writ that it was the invariable practice of the Immigration and Naturalization Service to stay all deportation proceedings whenever a private bill of this nature had been introduced in Congress until after Congress had an opportunity to act on the bill. In reversing, the Court of Appeals said at 843:

> "Our decision, however, rests on the present state of the record. On the remand of this case, respondents should be permitted, if they so desire, to file a return denying the relator's allegations as to the administrative practice. If they do so, of course there will be a trial of the resulting issue of fact."

We believe that this statement, along with the fact that *Knauff* was a habeas corpus proceeding, distinguishes it from the instant case.

In its brief the government states the following in regard to its policy whenever a private bill of this nature is introduced in Congress:

> "It is not the policy of the Immigration and Naturalization Service to stay deportation because of the mere filing of a private bill, but rather, the policy of the

> Immigration and Naturalization Service is to stay deportation only when the Committee on the Judiciary requests a report from the Service."

The asserted policy of the government with regard to private bills of this nature has not been challenged by petitioner. Also, the record does not show that the Senate Committee on the Judiciary requested a report from the Service in the instant case. This lack of challenge plus the absence of a requested report by the Senate Committee renders the Knauff decision ineffective to support petitioner's position, although we withhold our imprimatur to the policy since there has been no challenge of its reasonableness.

Furthermore, during the pendency of this review the government was permitted to file a certified part of the administrative record indicating that adverse action has been taken on the pending private bill by Congress. This part of the record indicates that the following action was taken by the Senate Committee on the Judiciary on March 7, 1962:

> "At the meeting of the Committee on the Judiciary today, this bill was indefinitely postponed, inasmuch as similar bills H.R. 1342 and H.R. 1343 were acted on adversely by the House Judiciary Committee on July 25, 1961."

Thus, from the record now before us it would appear that this bill has little, if any, chance of being passed by Congress. We hold, therefore, that the Immigration and Naturalization Service had no duty to stay the deportation orders merely because the private bill had been introduced in Congress.

(Opinion)

The action of the Immigration and Naturalization Service in denying the petition for a first preference visa is affirmed. Further, the requested stay of deportation is denied.

So Ordered.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 434

CONSTANTINOS ROUMELIOTIS AND PANAYOTA ROUMELIOTIS, HIS WIFE, PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a–9a) is reported at 304 F. 2d 453.

JURISDICTION

The judgment of the court of appeals was entered on June 15, 1962. A petition for rehearing was denied on July 9, 1962. The petition for a writ of certiorari was filed September 15, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioners' request for a stay of deportation pending Congressional action on a private bill in

their behalf was properly denied where another private bill introduced at the same session had already been acted upon adversely.

STATEMENT

Petitioners, natives of Greece, entered the United States as visitors under temporary non-immigrant visas. They overstayed their leave and were requested to depart by December 1, 1960. Applications for a first preference visa for petitioner Constantinos were denied.

In January 1961, after a hearing at which petitioners were represented by counsel, petitioners were ordered deported. Effectuation of the deportation order was stayed pending action by Congress on a private bill which had been introduced in the House of Representatives on petitioners' behalf. At the request of the House Judiciary Committee, immigration officials submitted a report on petitioners' status. The bills were acted upon adversely on July 25, 1961, and petitioners were ordered to surrender themselves for deportation on February 12, 1962.

On February 6, 1962, Senator Dirksen introduced in the Senate a bill on petitioners' behalf which was referred to the Senate Judiciary Committee. The Committee did not request a report from immigration officials and no action has been taken on the bill.

In February 1962, petitioners filed in the Court of Appeals for the Seventh Circuit a petition for review under Section 106(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. (Supp. III) 1105(a), contesting the denial of a preference visa to Constan-

tinos and seeking a stay of deportation pending action on the bill introduced by Senator Dirksen. The government challenged the jurisdiction of the court of appeals on the ground that, under the statute, judicial review in the court of appeals is confined to "final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under Section 242(b) of this Act," and that petitioners were seeking review of the denial of a first preference visa, not a final order of deportation pursuant to Section 242(b). The court of appeals held that it did have jurisdiction of the action since the application for a first preference visa was ancillary to the deportation order and if granted would, in effect, have nullified that order. On the merits, the court of appeals held that there was no abuse of administrative discretion in denying the relief sought.

As to the application for stay of deportation pending action on the private bill, the court of appeals noted that the government, in its brief, stated that the policy of the Immigration Service was not to stay deportation merely because a private bill had been introduced, but only where a Congressional Committee indicated interest by requesting a report on the alien. The court also noted that pending review, on March 7, 1962, the Senate Committee indefinitely tabled the bill on petitioners' behalf in view of the fact that similar bills had been acted on adversely by the House Judiciary Committee (Pet. App. 7a–8a).

ARGUMENT

In this Court, petitioners challenge only the denial of a stay of deportation pending action on Senator Dirksen's bill.[1] Since that bill has been indefinitely tabled because of prior adverse action by the House of Representatives, their position is that the mere fact that the bill has been introduced entitles them to a stay of deportation even though there is no likelihood that the bill will receive favorable consideration. This position is without merit.

The Immigration and Nationality Act makes no provision for a stay of deportation pending consideration of a private bill. It is the policy of the Immigration and Naturalization Service, as a matter of courtesy, to postpone deportation where Congress indicates an active intere in a private bill by requesting a report on the case from the immigration authorities. See Gordon and Rosenfield, *Immigration Law*

[1] The question of the jurisdiction of the court of appeals to review ancillary proceedings which, although they may in practice affect deportability, do not themselves relate to a final order of deportation and are not made in proceedings held under Section 242(b) of the Immigration and Nationality Act, is one on which there is a conflict of authority in the courts of appeals. See *Foti* v. *Immigration and Naturalization Service*, No. 27345 (C.A. 2), decided, September 21, 1962, taking a narrow view of the jurisdiction of the court of appeals in contrast to the decision below. Since, however, for the reasons stated in the text, petitioners are clearly not entitled to a stay of deportation, this case is not an appropriate one to consider that question.

and Procedure, pp. 801–802. That was done in this case with respect to the bill introduced on petitioners' behalf in the House of Representatives. There is, however, no reason for a further stay after adverse action on the House bills merely because a bill was introduced in the Senate, particularly since the Senate Judiciary Committee has indefinitely tabled the bill in light of prior adverse action by the House.

The decision in *United States ex rel. Knauff* v. *McGrath,* 181 F. 2d 839 (C.A. 2) on which petitioners rely, does not support their position. In that case the allegation of the petition for a writ of habeas corpus that it was the invariable policy of the Service to delay deportation while a private bill was pending was, on the record, undenied. In remanding the case to the district court, the court of appeals explicitly declared that its decision rested on the record before it, that on remand the respondent should be permitted to file a return denying the allegations as to administrative practice, and that the matter could then be determined by trial. Here the government has supplied the denial which was absent in the *Knauff* case, and petitioners do not dispute the accuracy of the description of administrative policy contained in the government's brief. Here, moreover, unlike in *Knauff,* the Senate bill has been indefinitely tabled because of prior unfavorable action by the House on a similar bill.[2]

[2] Inasmuch as the most recent session of Congress has expired, the Senate bill is no longer pending.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1962.

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